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ABSTRACT

After a unique court decision forbidding prior restraint in public high school publications in three states, a study was devised based on the responses to individual questionnaires sent to principals, faculty advisers, and student editors in each of the schools in the judicial district involved in the decision. Respondents answered questions concerning school size and location, frequency of newspaper distribution, newspaper sponsorship, and supervision of the paper. Other questions dealt with censorship, underground newspapers, freedom in high school newspapers, and personal familiarity with the court decision. Advisers and principals answered additional questions regarding their journalism experience and training and their practices for reviewing printed material. The results disclosed the following: only 10% of the advisers and 15% of the principals were familiar with the court decision; the decision did not precipitate an increase in campus disruptions; the journalism atmosphere was less restrictive in large communities and schools; and principals and advisers with academic or professional backgrounds tended to give students more freedom. The lack of consistency among the schools in permitting student freedom indicated that the court decision had little effect on high school journalism. (MAI)

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A BAN ON PRIOR RESTRAINT IN HIGH SCHOOLS: THE AFTERMATH OF THE FUJISHIMA DECISION

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A Ban on Prior Restraint in High Schools: The Aftermath of the Fujishima Decision

In the fall of 1976, Lauren Boyd, 17-year-old co-editor of the Hayfield High School Farm News in Fairfax County, Virginia, found through a series of interviews that several sexually active students in her school knew very little about birth control methods. However, she was refused permission to publish in the school paper an article containing results of the survey and information about contraception. The school principal, Ms. Doris Torrice, decided that the story violated the Fairfax County School Board's order temporarily prohibiting the teaching of sex education.[1] Thus, Ms. Boyd faced an instance of prior restraint, a form of censorship the government cannot impose on privately-owned media in the absence of exceptional circumstances,[2] but which several Circuit Courts of Appeals have considered permissible in high schools if there are carefully drawn substantive and procedural guidelines. That is, some courts have held that public school officials may require students to submit for approval any printed material they want to distribute on campus. If administrators approve, it may be distributed; if not, permission may be refused.

On several occasions, the Supreme Court has ruled that government officials cannot prohibit the publication of material by privately-owned media.[3] Rather, post-publication punishment is the acceptable method of dealing with an abuse of First Amendment freedoms. (Certain very limited exceptions to this exist, such as revealing information which would endanger national security.[4]) However, the Court has never determined whether this applies to public high school students, leaving such decisions to the lower courts.[5] U. S. Courts of Appeals have divided into three camps on the question:

1) Those which hold that prior restraint is acceptable if there are precise guidelines concerning the review procedures. That is, material submitted to an administrator by a student must be reviewed within a few days, there must be a method of appealing an adverse decision, and that appeals process must also take place quickly. Generally, courts taking this stance have found guidelines presented to them to be wanting in procedural due process.[6]

2) Those which hold that guidelines must be explicit as to what material will not be allowed to be distributed. That is, administrators must specify what types of content will not be acceptable. These guidelines should be written so students can understand them and so such decisions are not left to the whim of administrators. As with procedural questions, courts have generally found this aspect of substantive due process to be lacking in guidelines used by school officials.[7]

3) Only one court has specifically rejected the two approaches above and held that prior restraint is no more permissible in public high schools than in the community at large. In Fujishima v. Board of Education[8] the Circuit Court of Appeals for the Seventh Circuit, with jurisdiction in Illinois, Indiana, and Wisconsin, considered a case involving two students suspended for distributing copies of an underground newspaper and one student suspended for handing out anti-Vietnam War leaflets and petitions. All three students had violated the school district rule requiring material to be approved before distribution. Despite the school board's contention that the rule did not require approval of content, only of the actual act of distribution, the court said that content would be integral to the decision, thus making it a clear case of prior restraint. The court said that school boards could make reasonable regulations regarding the time, place, and manner of distribution, although students would not have to obtain permission each time they wanted to distribute material. Also, students could be punished after handing out material for violations of distribution rules and for abuses of their First Amendment privileges.

The Fujishima decision is unique; no other Court of Appeals has adoped it. The case presents an opportunity to determine the reaction of students, faculty advisers, and principals in the states affected--Illinois, Indiana, and Wisconsin--to this additional

measure of school press freedom. Has the court's decision convinced administrators that public high school students are entitled to as much First Amendment protection as college and/or professional journalists? Have students abused the freedom by attempting to distribute volatile material? Has the decision been equally accepted in large and small communities? This study is an initial attempt to determine practices and attitudes regarding high school student publications four years after the Fujishima decision.

Methodology

To study high school journalism in the post-Fujishima years, all schools in the Seventh Circuit (Illinois, Indiana, and Wisconsin) which were reported in official state directories as having grades 9-12 or 10-12 were surveyed. Three questionnaires, one each for principals, advisers, and student editors, were devised. Schools were randomly assigned to receive only one questionnaire so that only one of the three target groups responded from a school. A total of 474 usable surveys were returned (39 per cent): 35 per cent of the student editors sent back questionnaires, 38 per cent of the advisers, and 41 per cent of the principals. (See Table 1 for state-by-state tabulation.) The study was conducted during Spring, 1976.

Respondents answered questions concerning school size and location, frequency of newspaper distribution, and sponsorship

and advising of the paper. Advisers and principals were questioned about their own journalism experience and training. Twenty questions dealt with past and current practices of reviewing printed material by both adviser and administrator. The questionnaire also asked about incidences of disruption, censorship, and libel actions, and the distribution of underground newspapers. Finally, twelve questions sought opinions about the degree of freedom high school journalists have or should have. All respondents were asked if they were familiar with the Fujishima decision and, if so, to comment upon it.

Findings

Only 10 per cent of the advisers and 15 per cent of the principals responding were familiar with the Fujishima case by name. Significantly more advisers and principals in large schools* (19 per cent) had heard of the case than in medium-sized schools (9 per cent) or small schools (6 per cent) ($X^2 = 2.30$, $p < .01$).** Also, significantly more advisers and principals in Illinois (16 per cent) and Wisconsin (15 per cent) knew of Fujishima than did

*Large schools were defined as those with enrollments of 1,000 or more; medium-sized, 400 to 999; small, less than 400.

**Number of respondents varies from 389 to 456 where advisers, principals, and student editors are concerned, and from 338 to 374 where only advisers and principals are considered. The differences are attributable to missing data.

their counterparts in Indiana (3 per cent) ($X^2 = 9.71$, $p < .01$). However, because only 40 respondents knew of the Fujishima decision, it is difficult to assign any cause and effect relationship to the data collected. It is possible, however, to look at what did not occur as a result of the 1972 holding.

It has been suggested that if students were not restrained in some manner, either by review or outright censorship, they would begin unauthorized publications, would abuse their privileges, and would cause disruptions in the school.[9] Data from the Seventh Circuit do not support these fears. Of the 137 schools where underground newspapers have been distributed, 90 per cent reported a decrease in the number of such publications since 1972, the year of the Fujishima decision. Only six schools noted an increase in the number of underground newspapers; three were in Illinois, two in Indiana, and one in Wisconsin.

Of the schools which have had underground newspapers in the past, significantly more of these non-sponsored publications (71 per cent) were at large schools ($X^2 = 82.26$, $p < .001$). Also, significantly more of these publications were distributed in major metropolitan areas* (63 per cent) than in minor metropolitan areas (44 per cent) or non-metropolitan areas (25 per cent) ($X^2 = 30.07$, $p < .001$). There was a significant difference by state in the

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*Major metropolitan area is defined as having a population of 500,000 or more; minor metropolitan area, 50,000-499,000; non-metropolitan, under 50,000.

school reporting that underground papers had once been or are now being distributed: Indiana (40 per cent), Illinois (35 per cent), and Wisconsin (24 per cent) ($X^2 = 6.70$, $p < .03$).

Nor did the number of disruptions caused by printed materials increase. Of the 10 per cent of the principals and advisers who reported that disruptions had occurred in their schools prior to 1972, 72 per cent said the number of disruptions had decreased in the past four years. Only eight schools reported an increase in such disruptions.

While the Fujishima decision did not result in a rash of disturbances or unauthorized publications, neither did it have any significant effect on prior review of material. This may, in part, be because word of the ruling did not filter down to those whom it affected.[10] As indicated, only 15 per cent of the responding principals and 10 per cent of the responding advisers knew of the decision by name.

When asked if administrators have the power to review material prior to publication, 73 per cent of the respondents agreed. There was a significant difference ($X^2 = 8.94$, $p < .025$) between the responses of principals on the one hand and advisers and students on the other. While 81 per cent of the principals agreed as to their own power to review, only 67.5 per cent of the advisers and editors agreed ($X^2 = 8.94$, $p < .025$). Size of community was also a significant variable. Eighty-six per cent of the respondents in small schools and 76 per cent in medium-sized schools agreed that

administrators had the power to review, while only 60 per cent of the respondents in large schools agreed ($X^2 = 23.42$, $p < .001$).

Also significant was the respondent's prior journalism experience. Of the 44 advisers with journalism degrees, only 41 per cent agreed that administrators had the power to review material. This compares with 81 per cent of those advisers without journalism degrees ($X^2 = 24.83$, $p < .001$). Of the advisers with professional journalism experience, 53 per cent agreed, while 74 per cent of those without such experience agreed ($X^2 = 24.83$, $p < .001$).

While there was no significant difference between advisers who did or did not work on a high school or college newspaper, it was significant that principals with such experience were less likely to believe they had the power to review printed material before distribution. Seventy-five per cent of the principals who had worked on school newspapers agreed that administrators had the power to review, while 90 per cent of those without such experience agreed ($X^2 = 5.21$, $p < .05$).

Although 66 per cent of the respondents felt administrators have the power to review, this power is not always used. Only nine per cent of the respondents indicated that all printed material was reviewed by administrators, while an additional six per cent said all material in the school paper was reviewed. However, 50 per cent indicated that controversial material was reviewed by administrators. Again, significant differences were found for the

variables, "school size" and "state." Large schools were more likely to impose review on controversial material (63 per cent) than were medium-sized schools (40 per cent) or small schools (42 per cent) ($X^2 = 12.06$, $p < .002$). Also, schools in Indiana were more likely to review controversial material (63 per cent) than schools in Illinois (44 per cent) or Wisconsin (45 per cent) ($X^2 = 6.88$, $p < .05$). No significant differences were found in review practices between schools where the Fujishima decision was known and schools where it was not known.

Only 30 schools responded that administrative review of printed material before distribution had been stopped. Twenty-two (73 per cent) stopped reviewing in 1972 or after. There is no indication that knowledge of the Fujishima decision affected the decision to stop reviewing.

While schools in the Seventh Circuit continue to review material, contrary to the holding in Fujishima, they are instituting policies and guidelines for the operation of their newspapers. Of the schools responding, 136 (29 per cent) said they had established a written policy or set of guidelines for their student newspapers. Significant differences were found for several variables. Large schools are more likely to have policies (51 per cent) than medium-sized schools (32 per cent) or small schools (15 per cent) ($X^2 = 29.10$, $p < .001$). Schools in Indiana were more likely to have policies (41 per cent) than Illinois (28 per cent) or Wisconsin (27 per cent) ($X^2 = 7.16$, $p < .05$). Also, schools in minor metro-

politan areas were more likely to have student newspaper policies (49 per cent) than those in major metropolitan areas (36 per cent) or non-metropolitan areas (28 per cent) ($X^2 = 8.92$, $p < .01$). At least 59 per cent of the policies were written in 1972 or after. Of the 81 schools which reported having a written policy before 1972, 38 (46 per cent) said their policy had been changed since 1972, the year the Fujishima ruling was made. These reponses may be contrasted with two earlier studies. A Journalism Education Association survey of 246 schools in 1969 showed only 10 per cent of those responding had written policies governing their school newspapers.[11] A 1973 study by the same organization reported 51 per cent (N=160) of Indiana newspaper advisers said their schools had written policies.[12]

Opinions about the First Amendment rights of high school journalists indicated that the degree of protection which respondents believe students should have was not equavilent to that being provided. For instance, while 58 per cent of those responding to the question said that high school and college journalists' rights are the same under the law, and 61 per cent said the two groups should have the same rights, only 33 per cent said students at their high school, in fact, had the same freedom of expression they believe college students have. Similarly, 46 per cent said rights are the same under the law for high school and professional journalists, and 54 per cent said rights should be the same for both, but

only 20 per cent said student journalists at their school did have freedoms equivalent to those professional journalists have.

Statistically significant differences in responses to those attitudinal items existed among small, medium, and large schools. For all questions, those at small schools showed more restrictive approaches to students' freedom of expression than those at medium-sized schools, these being more restrictive than large schools. There was a significant difference in the responses by size of community to whether First Amendment freedoms should be the same for high school and college students. Seventy-seven per cent of those responding from minor metropolitan areas answered positively while 65 per cent of those in major metropolitan areas and 57 per cent of those in non-metropolitan areas answered affirmatively ($X^2 = 6.14$, $p < .05$). In asking whether students in the respondent's school actually had rights equal to those of college students, significant differences again existed among communities of different sizes, i.e., 51 per cent of major metropolitan areas, 40 per cent of minor metropolitan areas, and 23 per cent of non-metropolitan areas answered positively ($X^2 = 11.81$, $p < .01$).

The only attitudinal question in which type of respondent was significant was, "Do you believe that First Amendment rights to freedom of expression should be the same for high school and professional journalists?" Sixty-eight per cent of the student

journalists answered "yes," while 60 per cent of the advisers and 43 per cent of the principals believed rights should be the same for the two groups ($X^2 = 16.63$, $p<.001$).

It may be instructive to compare these results with those obtained in two earlier surveys of comparable respondents. In a study conducted for the Quill and Scroll Society in 1976, Campbell found that 87 per cent of principals and 89 per cent of advisers believed that high school student publications are "vital and necessary tools" in teaching about "the purposes and functions of mass media in a democratic society." However, 13 per cent of the principals agreed that the school board could set aside the First Amendment for "security reasons."[13] In 1971, Campbell reported that 28 per cent of advisers surveyed said advisers should be censors, 75 per cent said advisers should read editorial copy before publication, and 68 per cent said advisers should always read galley proofs.[14]

Discussion

For those who may have feared that a federal court decision forbidding prior restraint in public high schools except in the most extreme circumstances would foster an increase in underground papers and campus disruptions due to distribution of printed material by students, the results of this survey in the Seventh Circuit indicate otherwise. But for those who believe that the Fujishima ruling means students will not not abuse their

First Amendment rights when given relatively free reign, the survey cannot be used as confirmation. Too many variables not investigated here may well have intervened. Students generally are less active in political and social issues than in the years before the Fujishima case. There is no Vietnam War, no draft, no organized civil rights movement. Should student activism again rise, it would be necessary to compare events in high schools in the Seventh Circuit with those in schools where prior restraint is permitted--the states in the Second Circuit, for example.

These results do indicate that there is no consistent approach to, nor are there consistent attitudes toward, high school journalists. The atmosphere seems to be less restrictive in the large schools in large communities, more restrictive in smaller schools and communities. Principals and advisers with academic or professional backgrounds in journalism seem to be willing to give students more freedom than those without such experience. The Supreme Court has not generally said that First Amendment freedoms can be altered on the basis of such variables. It is true that by not ruling on the question of prior restraint in high school, the Supreme Court has allowed Courts of Appeals to announce decisions at variance with one another. The finding of a lack of consistency in freedoms believed in and granted within one circuit shows the state of First Amendment protection granted high school students remains based on the whim of those in charge, not the law.

Notes

[1]Gambino v. Fairfax Co. School Board, No. 76-946-A (E.D. Va. Feb 23, 1977).

[2]Near v. Minnesota, 283 U.S. 697 (1931).

[3]Id.; New York Times Co. v. U.S., 403 U.S. 713 (1971); Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971).

[4]See Near v. Minnesota, 283 U.S. 697.

[5]The Court did not accept an opportunity to do so in Jacobs v. Board of School Commissioners, 490 F.2d 601 (7th Cir. 1973), vacated and dismissed as moot, 420 U.S. 128 (1975).

[6]E.g., Eisner v. Stamford Board of Education, 440 F.2d 803 (2d Cir. 1971); Quarterman v. Byrd, 453 F.2d 54 (4th Cir. 1971); Baughman v. Freienmuth, 478 F.2d 1345 (4th Cir. 1973).

[7]E.g., Jacobs v. Board, 490 F.2d 601; Baughman v. Freienmuth, 478 F.2d 1345; Shanley v. Northeast Independent School District, 462 F.2d 960 (5th Cir. 1972).

[8]460 F.2d 1355 (7th Cir. 1972).

[9]E.g., Schwartz v. Schuker, 298 F. Supp. 238 (E.D.N.Y. 1969); Katz v. McAvlay, 438 F.2d 1058 (2d Cir. 1971), cert denied, 405 U.S. 933 (1972).

[10]E.g., see S. Wasby, The Impact of the United States Supreme Court (1970) for a discussion of how court opinions fail to filter down to those affected by them.

[11]Benedict, "Today's Young Journalists Need Teacher-Administrator Team Effort," 4 Communication: Journalism Education Today 3 (Spring 1971).

[12]Benedict, "Anatomy of a High School Publications Adviser" (August 1973) (paper presented to Association for Education in Journalism convention).

[13]Campbell, "Principals' Attitudes Toward Student Journalism and Freedom of the Press (January 1976) (study for Quill and Scroll Society).

[14]Campbell, "The Role of the High School Newspaper," 45 Quill and Scroll 22 (February-March 1971).

TABLE No. 1

NUMBER OF RESPONDENTS BY TYPE AND STATE

	Illinois		Indiana		Wisconsin		Total*	
	Sent	Rec'd	Sent	Rec'd	Sent	Rec'd	Sent	Rec'd
Advisers	203	73 (40%)	152	57 (37.5%)	135	51 (38%)	490	184 (37.5%)
Principals	205	89 (43%)	152	53 (35%)	136	57 (42%)	493	203 (41%)
Student Editors	102	34 (33%)	77	26 (34%)	68	26 (38%)	247	87 (35%)
Total*	510	196 (38%)	381	136 (36%)	339	134 (39.5%)	1230	474 (38.5%)

*Figures may not add to total due to missing data.